

## § 222.113

### **§ 222.113 What are the responsibilities of the Assistant Secretary after the hearing?**

(a) Within 30 days after receiving the entire hearing record and the hearing examiner's findings and recommendations, the Assistant Secretary makes, on the basis of the record, a written determination that includes—

(1) Any appropriate remedial action that the LEA must take;

(2) A schedule for completing any remedial action; and

(3) The reasons for the Assistant Secretary's decision.

(b) After completing the final determination required by paragraph (a) of this section, the Assistant Secretary sends the parties a copy of that determination.

(c) The Assistant Secretary's final determination under paragraph (a) of this section is the final action of the Department concerning the complaint and is subject to judicial review.

(Authority: 20 U.S.C. 7704(e))

#### **WITHHOLDING AND RELATED PROCEDURES FOR INDIAN POLICIES AND PROCEDURES**

SOURCE: 62 FR 35416, July 1, 1997, unless otherwise noted.

### **§ 222.114 How does the Assistant Secretary implement the provisions of this subpart?**

The Assistant Secretary implements section 8004 of the Act and this subpart through such actions as the Assistant Secretary determines to be appropriate, including the withholding of funds in accordance with §§ 222.115–222.122, after affording the affected LEA, parents, and Indian tribe or tribes an opportunity to present their views.

(Authority: 20 U.S.C. 7704 (d)(2), (e) (8)–(9))

### **§ 222.115 When does the Assistant Secretary withhold payments from a local educational agency under this subpart?**

Except as provided in § 222.120, the Assistant Secretary withholds payments to an LEA if—

(a) The Assistant Secretary determines it is necessary to enforce the re-

## 34 CFR Ch. II (7–1–05 Edition)

quirements of section 8004 of the Act or this subpart; or

(b) After a hearing has been conducted under section 8004(e) of the Act and §§ 222.102–222.113 (IPP hearing)—

(1) The LEA rejects the final determination of the Assistant Secretary; or

(2) The LEA fails to implement the required remedy within the time established and the Assistant Secretary determines that the required remedy will not be undertaken by the LEA even if the LEA is granted a reasonable extension of time.

(Authority: 20 U.S.C. 7704 (a), (b), (d)(2), (e)(8)–(9))

### **§ 222.116 How are withholding procedures initiated under this subpart?**

(a) If the Assistant Secretary decides to withhold an LEA's funds, the Assistant Secretary issues a written notice of intent to withhold the LEA's payments.

(b) In the written notice, the Assistant Secretary—

(1) Describes how the LEA failed to comply with the requirements at issue; and

(2)(i) Advises an LEA that has participated in an IPP hearing that it may request, in accordance with § 222.117(c), that its payments not be withheld; or

(ii) Advises an LEA that has not participated in an IPP hearing that it may request a withholding hearing in accordance with § 222.117(d).

(c) The Assistant Secretary sends a copy of the written notice of intent to withhold payments to the LEA and the affected Indian tribe or tribes by certified mail with return receipt requested.

(Authority: 20 U.S.C. 7704 (a), (b), (d)(2), and (e) (8)–(9))

### **§ 222.117 What procedures are followed after the Assistant Secretary issues a notice of intent to withhold payments?**

(a) The withholding of payments authorized by section 8004 of the Act is conducted in accordance with section 8004 (d)(2) or (e)(8)–(9) of the Act and the regulations in this subpart.

(b) An LEA that receives a notice of intent to withhold payments from the Assistant Secretary is not entitled to